

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Petition of US LEC Corp. )  
For Declaratory **Ruling** )  
Regarding LEC Access Charges )  
For CMRS Traffic )  
\_\_\_\_\_ )

~~File No.~~ \_\_\_\_\_

cc Docket

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PETITION FOR DECLARATORY RULING OF US LEC CORP.

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## SUMMARY

The responsibility of interexchange carriers (“IXCs”) to compensate local exchange carriers (“LECs”), including competitive local exchange carriers, for access service that is **used** to provide connections between commercial mobile radio service (“CMRS”) providers and IXCs such that interexchange calls to, and from, CMRS end **users** can be completed is well-established under both Commission precedent and industry practice. US LEC has been invoicing applicable access charges to IXCs for CMRS traffic, and, until recently, no IXC has objected to this practice. Recently, an IXC challenged US LEC’s billing for access service provided on long distance calls to, and from, CMRS end users. US LEC asks the Commission to issue a ruling reaffirming that LECs are entitled **to** recover access charges from IXCs for the provision of access service on interexchange calls originating from, or terminating on, the networks of CMRS providers.

**A**s more and more CMRS end users utilize their phones for long distance calls, LEC networks will be increasingly called upon to provide vital access service in ensuring that these calls are completed. Under the existing compensation structure established by the Commission, it is clear that LECs are entitled to access charges for these calls, and it is also clear that the prevailing practice is for LECs to assess access charges for these calls, and for the IXC to pay these charges. **A** prompt ruling by this Commission reaffirming the **right** of LECs **to** collect access charges for the access service they provide on these calls will serve to dispel any controversy or uncertainty surrounding this issue.

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**PETITION FOR DECLARATORY RULING OF US LEC CORP.**

US LEC Corp. ("US LEC"), pursuant to Section 5(d) of the Administrative Procedures Act, 5 U.S.C. § 554(d), Section 201 of the Communications Act, 47 U.S.C. § 201, and Commission Rule 1.2, petitions the Commission to enter a declaratory ruling reaffirming that local exchange carriers ("LECs"), whether incumbent local exchange carriers ("ILECs") or competitive local exchange carriers ("CLECs"), are entitled to recover access charges for interexchange traffic that passes from commercial mobile radio service ("CMRS") providers to interexchange carriers ("IXCs") (or vice versa) via the **network** of the LEC.

**I. BACKGROUND FACTS**

US LEC is a switch-based, **wireline** competitive local exchange carrier that delivers **high** quality local, long distance and data services to large and mid-sized business customers in the mid-Atlantic and southeastern regions of the United States. In addition to providing local exchange service, US LEC provides access service to various customers, including CMRS carriers. The Commission provided the following description of the type of CMRS traffic at issue:

For example, when a cellular customer places a long-distance call, the cellular carrier typically transmits the call to the LEC, which connects the call to the MC. Similarly, when long-distance calls are placed to cellular customers, the MC handling the call typically transmits the call to a LEC, which, in turn, hands it to the cellular carrier for termination to the called Party.'

US LEC is performing the traditional role of a local exchange provider in providing access service to the IXC such that the call from the **CMRS** switch to the IXC travels over its facilities. There is **no** dispute that if the call originated or terminated on a landline that an IXC would pay US LEC the requisite access charges. There should be **no** dispute under the Commission's precedent and standard industry practice that a LEC is entitled to access charges when the calls originate and/or terminate on a wireless network.

Many CMRS providers rely on LECs to provide this valuable access service. As the Commission has noted, "until CMRS providers generate sufficient **traffic** to warrant direct connections to IXC points of presence, we believe that most CMRS providers are likely to depend **on** LECs for interconnection of interexchange traffic to **IXCs**."<sup>2</sup> **Thus**, they rely on the facilities of LECs to connect to the IXC. Initially, the Commission expected that most wireless calls would originate and terminate within a major trading area ("MTA") such that the calls would be covered by the Commission's reciprocal compensation rules. The Commission observed in 1996 that "under **our** existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges **unless it is carried by an IXC**, with the exception of certain interstate

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<sup>1</sup> In the **Matters of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers**, CC Docket Nos. 95-185 and 94-54, Notice of Proposed Rulemaking, FCC 95-505, 11 F.C.C.R. 5020, ¶ 115 (Jan. 11, 1996). LECs also provide access service in the context of 8YY calls. In this context, the CMRS customer calls another party via that party's 8YY number. In this situation, US LEC picks up the call from the CMRS switch and transports it to the IXC who will deliver it to its 8YY customer. US LEC also provides toll **free** data *query* service for 8YY calls.

interexchange service provided by CMRS providers that ~~transits~~ incumbent LEC's switching facilities, which is subject to interstate access charges.”

Today, however, more wireless end users use their phones for long distance calls. **Thus**, the networks of US LEC and other LECs are increasingly called upon to provide access service to IXCs. For instance, Sprint PCS, AT&T Wireless and Verizon Wireless all offer nationwide long distance plans encouraging use of the wireless phone for long distance calls to anywhere in the United States. It is vital then that LECs be able to recover access charges for providing **this** access service.

US LEC charges IXCs the appropriate benchmark rate **as** mandated by the Commission in the *CLEC Access Charge Order*. US LEC **has** invoiced access charges to IXCs for CMRS traffic and, until recently, no MC has challenged **this** practice. Recently, an IXC has declined to pay for said charges. While US LEC believes the IXC's refusal to pay is totally unsupported under the Act, Commission precedent and prevailing industry practice, US LEC is desirous of eliminating any controversy, and any other challenges that may arise in the future, by asking the Commission to reaffirm the fact that under existing rules LECs (whether ILEC or CLEC) are entitled to access charges for connecting the CMRS provider and the IXC such that the interexchange calls can be completed. Such a ruling would eliminate any uncertainty that may surround the issue and nip any further disputes in the bud. Given the increasing use of access service to transport wireless calls, it **is** vital that any uncertainty or controversy regarding this issue be removed.

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<sup>2</sup> *Id.*, ¶ 115.

<sup>3</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First

## II. US LEC IS ENTITLED TO RECOVER ACCESS CHARGES FOR PROVIDING ACCESS SERVICE FOR CMRS TRAFFIC

Section 1.2 of the Commission's Rules provides that "[t]he Commission may, in accordance with Section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty."<sup>4</sup> There should be no controversy as to an IXC's duty to pay a LEC for the charges in question. In 1996, the Federal Communications Commission addressed the issue of whether LECs or IXCs should remit any access charges to CMRS providers when the LEC and CMRS provider jointly provide access service.<sup>5</sup> While the issue involved the right of the CMRS provider to access charges, the Commission's statement of the applicable law demonstrated the entitlement of LECs to access charge revenues for CMRS traffic. The Commission tentatively concluded that CMRS providers should be allowed to recover access charges from the IXCs based on the fact that LECs were already recovering such charges from IXCs. The Commission noted:

In the context of the existing access charge regime, we tentatively conclude that CMRS providers should be entitled to recover access charges from IXCs, *as the LECs do when interstate interexchange traffic passes from CMRS customers to IXCs (or vice versa) via LEC networks.*

We propose to require that CMRS providers be treated no less favorably than neighboring LECs or CAPs with respect to recovery of access charges from IXCs and LECs for interstate interexchange traffic!

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Report and Order, CC Docket Nos. 96-98 and 95-185, FCC 96-325, at ¶ 1043 (rel. Aug. 8, 1996) ("*Local Competition Order*") (emphasis added).

<sup>4</sup> 41 C.F.R. Section 1.2.

<sup>5</sup> In the Matters of *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers*, CC Docket Nos. 95-185 and 94-54, Notice of Proposed Rulemaking, FCC 95-505, ¶ 115 (Jan. 11, 1996).

<sup>6</sup> In the Matters of *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers*, CC Docket Nos. 95-185 and 94-54, Notice of Proposed Rulemaking, FCC 95-505, ¶ 115 (Jan. 11, 1996) (emphasis added).

The Commission statement that it felt it needed to take such action so that **CMRS** providers would be treated “no less favorably than neighboring LECs or CAPs with respect to recovery of access charges from **IXCs** and **LECs** for interstate interexchange traffic” demonstrates that it was, and is, the norm that **LECs** were already recovering such charges for their services.

The Comments submitted in reply to the Commission’s **1996 NPRM** unequivocally demonstrated that **LECs** were collecting access charges from **IXCs** for calls that originated or terminated on **CMRS** networks. **US WEST** stated that when its network is used to transport interstate traffic between a **CMRS** provider and an **IXC** it charges the **IXC** for its transiting function and not the **CMRS** provider.’ The charges come from its interstate switched access tariff.\* Pacific Telesis noted that “the **LEC** does not impose a usage-based charge on the **CMRS** provider for transporting **CMRS**-originated traffic to the **IXC**, and the **LEC** collects access charges from the **IXC** excluding the carrier common line charge in the Type 1 **CMRS** interconnection and the carrier common line and switching charges in Type 2A interconnection.”<sup>9</sup> Pacific Bell noted:

[W]hen interexchange traffic passes from **CMRS** customers (or vice versa) via our network, we provide local transport for the **IXC**, and the **IXC** compensates us for the local transport rate element of interstate access charges. On tandem routed calls, the **CMRS** provider provides the local switching and carrier common line functions. On calls routed directly to an end office, we perform local switching and local transport functions

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<sup>7</sup> CC Docket No. 95-185, Comments of US WEST at 63 (3/4/1996) (“US WEST Comments”).

<sup>8</sup> *Id.*

<sup>9</sup> CC Docket No. 95-185, Comments of BellSouth Corporation at 38 (3/4/1996), citing, CC Docket No. 94-54, Reply Comments of Pacific Telesis at 9-10 (Oct. 13, 1994).

and charge the IXC for them. In either case, we receive no compensation from either the CMRS provider or the calling party.”

AT&T noted that it paid access charges to LECs to cover the costs of origination, transport and termination of traffic but it did not pay access charges to the CMRS providers themselves even though their networks may be the ultimate point of origination and termination for the interexchange traffic.<sup>11</sup> Thus, the Comments corroborated what the FCC described in the *NPRM*, *i.e.*, that LECs were recovering access charges from IXCs for CMRS traffic.

The Commission, however, ultimately did not implement the rule allowing for CMRS providers to recover access charges for the provision of access service. Based on this, AT&T recently challenged the authority of Sprint PCS to charge access charges *to* AT&T. The Commission, in the context of a primary jurisdiction referral from a federal court, “found that Sprint PCS was not prohibited from charging AT&T access charges, but that AT&T was not required to pay such charges absent a contractual obligation to do so.”<sup>12</sup> The Commission noted that it considered implementing a rule allowing CMRS providers to be able to assess access charges similar to the way LECs and competitive access providers do, but it never adopted a final decision adopting or implementing the rule.<sup>13</sup> The Commission noted that “Section 69.5(b) of the Commission’s rules enables local exchange carriers to impose access charges on IXCs, but CMRS carriers do not provide service subject to Part 69 of the Commission’s rules because their access services

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<sup>10</sup> CC Docket No. 95-185, Comments of Pacific Bell at 105 (3/4/1996) (“PacBell Comments”).

<sup>11</sup> CC Docket No. 95-185, Comments of AT&T at 31 (3/4/1996).

<sup>12</sup> *In the Matter of Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling at ¶ 1 (July 3, 2002), *petition for review filed*, No. 02-1221 (D.C. Cir. July 9, 2002). AT&T has appealed this ruling to the U.S. Court of Appeals for the D.C. Circuit.

<sup>13</sup> *Id.*, ¶ 9.

are detariffed and the rates are not **regulated**.”<sup>14</sup> This language clearly reinforces the notion that LECs may impose access charges for CMRS traffic. Unlike CMRS providers, LECs have tarified access charges and their access charges are regulated. Under **Part** 69 of the Commission’s rules, LECs are entitled to recovery of these tarified access charges.”

Other Commission statements support **this** view. The Commission has noted:

[S]ome cellular carriers provide their customers with a service whereby a call to a subscriber’s local cellular number will be routed to them over interstate facilities when the customer is “roaming” in a cellular system in another state. In **this** case, the cellular carrier is providing not local exchange service but interstate, interexchange service. In **this** and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access **charge**.<sup>16</sup>

Again the language supports the proposition that LECs are entitled to recover access charges for the type of traffic at issue.

In addition, **this** Commission recently resolved a case involving a CMRS provider providing one-way paging services. The paging company challenged the right of the LEC to charge for “transiting traffic,” *i.e.*, the costs the LEC incurred when it transported traffic that originated from another carrier **to** the paging carrier’s network. Since the calls in **this** instance were local calls, not toll calls, a different factual situation resulted since reciprocal compensation rules governed **as** opposed to access charge rules. One

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<sup>14</sup> *Id.*, ¶ 9, n. 31.

<sup>15</sup> 47 C.F.R. § 69.5(b) (“Carrier’s carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.”)

*Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, Rules and Regulations, 61 FR 45476, \*45578, ¶ 696 (Aug. 29, 1996).

argument the paging company **raised**, however, was that the LEC was already recovering the costs of these facilities via, among other things, its access charges. The Commission found no double recovery noting that:

Answer Indiana's "double recovery" claims are deficient. The Commission has previously concluded that LECs cannot assess charges **on** interexchange carriers ("IXCs") for the facilities used to connect the CMRS provider's network to that of the LEC because those facilities are not common lines for purposes of the access charge rules. Thus, access charge revenue received by GTE North from an IXC cannot lawfully include the cost of the interconnection facilities associated with transiting traffic between Answer Indiana and GTE North. Because Answer Indiana has presented no evidence indicating that GTE North's access charges do, in fact, include such costs, we conclude that GTE North is not using access charge revenue to recover twice for the same facilities."

The Commission's language above clearly suggests that LECs are entitled to recover access charges to connect the CMRS provider to the IXC. In fact, since long distance traffic is not subject to the transportation and termination provisions of section 251, access charges would be the exclusive vehicle for LECs to recover the costs of toll transport provided over the facilities in question." The Commission has held that traffic to or from a CMRS network that originates and terminates within the same MTA ("major trading area") is subject to transport and termination rates under section 251(b)(5), rather than interstate **or** intrastate access charges?" Thus, CMRS calls that do not fall under Section 251(b)(5) are subject to access charges.

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<sup>17</sup> Answer Indiana is the paging company.

<sup>18</sup> *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp. d/b/a Verizon Communications*, File No. 99B-00-MD-14, Memorandum Opinion and Order, FCC 01-347 (Nov. 28, 2001).

*See Local Competition Order*, ¶ 1034.

<sup>20</sup> *Id.*, ¶ 1036.

**III. SINCE US LEC IS CHARGING THE BENCHMARK RATE, ITS CHARGES ARE PRESUMED TO BE JUST AND REASONABLE**

The Commission has noted that “the Act and ~~our~~ rules require IXCs to pay the published rate for tariffed CLEC access service, absent an agreement to the contrary or a finding by the Commission that the rate is unreasonable.”<sup>21</sup> In the *CLEC Access Charge Order*, the Commission established a benchmark level at which CLEC access rates will be conclusively presumed to be just and reasonable and at (or below) which they may therefore be tariffed.’ US LEC’s access charges to IXCs for the CMRS traffic are within the safe harbor established by the **Commission**.<sup>23</sup> The Commission stated

[w]e conclude that CLEC access rates will be conclusively deemed reasonable if they fall within the safe harbor that we have established. Accordingly, an IXC that refused payment of tariffed rates within the safe harbor would be subject to suit on the tariff in the appropriate federal court, without the impediment of a primary jurisdiction referral to the Commission to determine the reasonableness of the **rate**.<sup>24</sup>

Thus, there is no issue ~~as~~ to the reasonableness of the rates charged.

**IV. THE COMMISSION SHOULD GRANT THE PETITION ON AN EXPEDITED BASIS**

US LEC additionally requests that the Commission consider and grant this petition on an expedited basis. As noted above, one IXC has ceased making payments to US LEC for the access charges on ~~this~~ traffic and is continuing to do so. As a result, US LEC continues to go uncompensated for this service. If the Commission issues a prompt ruling on the prevailing law as to access charges for CMRS traffic such a ruling would

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<sup>21</sup> *In the Matter of Access Charge Reform. Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, FCC 01-146, ¶28 (April 27, 2001) (“*CLEC Access Charge Order*”).

<sup>22</sup> *Id.*, ¶ 40.

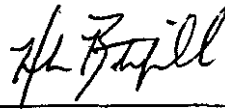
<sup>23</sup> US LEC also bills applicable intrastate access charges via its intrastate access ~~tariffs~~ based on the percentage of interstate use (“PIU”) provided by the IXC.

unequivocally reaffirm the ~~rights~~ and obligations of carriers in regard to the traffic under current rules and help preclude the development of any further disputes.

V. **CONCLUSION**

For the foregoing reasons; US LEC respectfully requests that the Commission reaffirm that LECs **are** entitled to recover from IXCs access charges for traffic that they transport from a CMRS provider to the IXC (~~and~~ vice versa).

Respectfully submitted,



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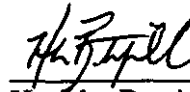
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September 18, 2002

## CERTIFICATE OF SERVICE

I, Harisha Bastiampillai, hereby certify that on September 18, 2002, I caused to be served upon the following individuals the Petition for Declaratory Ruling of US LEC Corp.



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